

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 29, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP951

Cir. Ct. No. 2011CV2355

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

TYLER WYAND-WILLIAMS,

PLAINTIFF-APPELLANT,

V.

**ST. NORBERT COLLEGE, INC., HARTFORD UNDERWRITERS INSURANCE
COMPANY, GARY GRZESK, KYLE BROWN AND WOODROW WILSON,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Brown County:
WILLIAM M. ATKINSON, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve
Judge.

¶1 PER CURIAM. Tyler Wyand-Williams appeals an order dismissing his claims against St. Norbert College, Inc., Hartford Underwriters Insurance Company, Gary Grzesk, Kyle Brown, and Woodrow Wilson

(collectively, the College). The circuit court concluded Wyand-Williams' complaint failed to state a claim upon which relief could be granted because it contained only conclusory allegations and did not set forth a sufficient factual basis for Wyand-Williams' claims. We agree, and therefore affirm.¹

BACKGROUND

¶2 The complaint² alleged that Wyand-Williams was a student at St. Norbert College in De Pere, Wisconsin. While there, he acted as a “student manager and employee” for the St. Norbert College basketball team. In March 2009, he joined the basketball team as a player. At that time, Grzesk was employed by St. Norbert College as head coach of the basketball team, and Brown and Wilson were employed as assistant coaches.

¶3 Wyand-Williams asserted three claims against the College. In support of his first claim—intentional infliction of emotional distress—he alleged that Grzesk, Brown, and Wilson “directly and indirectly[] pressured, intimidated,

¹ The circuit court also concluded that Wyand-Williams' claims should be dismissed on recreational immunity and public policy grounds. Because we conclude the complaint did not contain sufficient factual allegations to state a claim, we need not address these alternative grounds for dismissal. See *State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases should be decided on the narrowest possible grounds).

In addition to appealing the order dismissing his claims, Wyand-Williams also appeals an order granting the College's motion for change of venue. Because we conclude Wyand-Williams' claims were properly dismissed, we need not address his challenge to the venue change. See *Butler v. Advanced Drainage Sys., Inc.*, 2005 WI App 108, ¶2 n.1, 282 Wis. 2d 776, 698 N.W.2d 117, *aff'd*, 2006 WI 102, 294 Wis. 2d 397, 717 N.W.2d 760 (affirming circuit court's grant of summary judgment and, consequently, declining to address appellant's argument that circuit court erred by granting a change of venue).

² Wyand-Williams' original complaint was filed in June 2011. He later amended the complaint after learning the name of St. Norbert College's insurer. Because the allegations in the complaint and amended complaint are otherwise identical, we simply refer to the complaint.

humiliated, and otherwise caused [him] to terminate his position as a member of the St. Norbert College men's basketball team." Wyand-Williams alleged this conduct "inflict[ed] severe emotional distress" on him. Additionally, he asserted that "the defendants acted with extreme and outrageous conduct so as to intentionally cause" emotional distress "through means including ... humiliation, profanity, embarrassment, and the like."

¶4 The complaint also asserted a claim for negligent infliction of emotional distress. In support of this claim, Wyand-Williams alleged that Grzesk, Brown, and Wilson inflicted "severe and disabling emotional distress" on him "through their actions and omissions to act, during the course of their employment for ... St. Norbert College[.]"

¶5 Finally, the complaint asserted a claim for "conspiracy to act." As the basis for this claim, Wyand-Williams alleged that Grzesk, Brown, and Wilson "acted in concert, directly and indirectly, to pressure, intimidate, humiliate, and otherwise cause [him] to terminate his position as a member of the St. Norbert College men's basketball team[.]" Again, Wyand-Williams asserted this conduct caused him severe emotional distress. With respect to all three claims, Wyand-Williams alleged that the coaches' actions drove him "to despair, despondency, depression, anxiety, and to the brink of suicide" and caused him to leave St. Norbert College during the spring 2010 semester.

¶6 The College moved to dismiss Wyand-Williams' complaint for failure to state a claim upon which relief can be granted. The College argued that the complaint contained only conclusory allegations that the coaches' conduct caused Wyand-Williams emotional distress, without providing sufficient factual

detail about what the coaches actually did. The circuit court agreed, and dismissed Wyand-Williams' claims. Wyand-Williams now appeals.

DISCUSSION

¶7 Whether a complaint states a claim upon which relief can be granted is a question of law that we review independently. *See John Doe 67C v. Archdiocese of Milwaukee*, 2005 WI 123, ¶19, 284 Wis. 2d 307, 700 N.W.2d 180. In so doing, we accept the facts alleged in the complaint as true and draw all reasonable inferences in favor of stating a claim. *Meyer v. Laser Vision Inst., LLC*, 2006 WI App 70, ¶3, 290 Wis. 2d 764, 714 N.W.2d 223. We liberally construe the complaint and affirm the dismissal only if it is quite clear there are no conditions under which the plaintiff can recover. *Town of Eagle v. Christensen*, 191 Wis. 2d 301, 311, 529 N.W.2d 245 (Ct. App. 1995).

¶8 Wisconsin is a “notice pleading” state. *Farr v. Alternative Living Servs., Inc.*, 2002 WI App 88, ¶11, 253 Wis. 2d 790, 643 N.W.2d 841. Thus, to state a claim, a complaint need only “notify the opposing party of the pleader’s position in the case—no ‘magic words’ are required.” *Id.* However, even under notice pleading, a complaint cannot be “completely devoid of factual allegations.” *John Doe*, 284 Wis. 2d 307, ¶36. Instead, it must contain “[a] short and plain statement of the claim, identifying the transaction or occurrence or series of transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief.” WIS. STAT. § 802.02(1)(a).³ In other words, the complaint must set forth “a statement of the general factual circumstances in

³ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

support of the claim presented.” *Ziemann v. Village of North Hudson*, 102 Wis. 2d 705, 713, 307 N.W.2d 236 (1981) (quoting Judicial Council Committee’s Note, 1974, WIS. STAT. § 802.02).

¶9 Thus, dismissal is proper if, “[u]nder the guise of notice pleading, the complaint ... requires the court to indulge in too much speculation leaving too much to the imagination of the court.” *John Doe*, 284 Wis. 2d 307, ¶36 (quoting *Wilson v. Continental Ins. Cos.*, 87 Wis. 2d 310, 326-27, 274 N.W.2d 679 (1979)). It is not enough for the plaintiff to contend that the requisite facts will be supplied during discovery. *Id.* “[S]ufficient detail must be given so that the defendant, and the court, can obtain a fair idea of what plaintiff is complaining, and can see that there is some basis for relief.” *Midway Motor Lodge of Brookfield v. Hartford Ins. Group*, 226 Wis. 2d 23, 35, 593 N.W.2d 852 (Ct. App. 1999) (quoting *Hlavinka v. Blunt, Ellis & Loewi, Inc.*, 174 Wis. 2d 381, 404, 497 N.W.2d 756 (Ct. App. 1993)).

¶10 Here, Wyand-Williams’ complaint asserts virtually no factual basis for his claims. It alleges that Grzesk, Brown, and Wilson “acted in concert” and “directly and indirectly” “pressured, intimidated, humiliated, and otherwise caused” him to quit the basketball team. However, aside from a general reference to “profanity,” the complaint provides no detail about what the coaches actually did to make Wyand-Williams feel pressured, intimidated, or humiliated. The operative allegations in the complaint are conclusory, not factual. The complaint leaves too much to the court’s imagination, and to find it sufficient we would have to speculate about the wrongful conduct the coaches committed. We will not supply facts or engage in speculation in order to find that a complaint states a claim. *See John Doe*, 284 Wis. 2d 307, ¶36; *Wilson*, 87 Wis. 2d at 319. Without

more, the minimal facts alleged in Wyand-Williams' complaint are insufficient to establish the necessary elements of any of Wyand-Williams' three claims.

¶11 First, the factual allegations in the complaint fail to establish the elements of a claim for intentional infliction of emotional distress. To state a claim for intentional infliction of emotional distress, a complaint must allege that: (1) the defendant's conduct was intended to cause emotional distress; (2) the defendant's conduct was extreme and outrageous; (3) the defendant's conduct was a cause-in-fact of the plaintiff's emotional distress; and (4) the plaintiff suffered an extreme disabling emotional response to the defendant's conduct. *See Rabideau v. City of Racine*, 2001 WI 57, ¶33, 243 Wis. 2d 486, 627 N.W.2d 795. At the very least, Wyand-Williams has failed to establish the first and second elements of an intentional infliction of emotional distress claim.

¶12 With respect to the first element, aside from a conclusory assertion that the coaches "intentionally" caused him emotional distress, Wyand-Williams does not plead any facts supporting an inference that causing emotional distress was the coaches' goal. Without going into any greater detail, Wyand-Williams asserts that the coaches pressured, intimidated, and humiliated him. It would be pure speculation for us to conclude that the coaches performed these actions—whatever they actually were—for the purpose of causing Wyand-Williams emotional distress. As the College points out, exerting pressure, intimidation, or even humiliation upon athletes is a fairly routine coaching technique. Consequently, the allegations in the complaint are simply insufficient to support an inference that the coaches acted with intent to cause Wyand-Williams emotional distress.

¶13 The second element of intentional infliction of emotional distress requires the plaintiff to establish that the defendant's conduct was "extreme and outrageous." *Id.* In assessing whether conduct is "extreme and outrageous," we have previously applied comment d to § 46 of RESTATEMENT (SECOND) OF TORTS (1965),⁴ which provides:

Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. The rough edges of our society are still in need of a good deal of filing down, and in the meantime plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind. There is no occasion for the law to intervene in every case where some one's feelings are hurt.

(Emphasis added.) The scant factual allegations in Wyand-Williams' complaint do not indicate that the coaches' behavior rose to this level, and any conclusion to the contrary would be the result of pure speculation. Without more detail about what the coaches actually did, the complaint fails to allege any conduct that rises beyond "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." See RESTATEMENT (SECOND) OF TORTS, § 46 cmt. d. The allegations in the complaint therefore fail to establish the second element of intentional

⁴ See *Doerschling v. State Funeral Dirs. & Embalmers Examining Bd.*, 138 Wis. 2d 312, 335, 405 N.W.2d 781 (Ct. App. 1987) (citing RESTATEMENT (SECOND) OF TORTS, § 46 cmt. d).

infliction of emotional distress. As a result, the complaint fails to state an intentional infliction of emotional distress claim.

¶14 Wyand-Williams’ claim for negligent infliction of emotional distress also fails. To state a claim for negligent infliction of emotional distress, a complaint must allege that: (1) the defendant’s conduct fell below the applicable standard of care; (2) the plaintiff suffered severe emotional distress; and (3) the defendant’s conduct was a cause-in-fact of the plaintiff’s emotional distress. *Bowen v. Lumbermens Mut. Cas. Co.*, 183 Wis. 2d 627, 632, 517 N.W.2d 432 (1994). Wyand-Williams’ complaint does not allege that the coaches’ (largely unspecified) conduct fell below any standard of care. Thus, the complaint fails to state a claim for negligent infliction of emotional distress.

¶15 Wyand-Williams’ conspiracy claim is also deficient. To state a claim for civil conspiracy, a complaint must allege: (1) the formation and operation of a conspiracy; (2) the wrongful act or acts done pursuant the conspiracy; and (3) the damage resulting from the act or acts. *Onderdonk v. Lamb*, 79 Wis. 2d 241, 247, 255 N.W.2d 507 (1977). “Facts should be alleged which show that the acts done in furtherance of the conspiracy were wrongful. An averment that a party acted unlawfully without showing what he or she did is not sufficient, nor will an allegation of a lawful act support a charge of conspiracy.” *Modern Materials, Inc. v. Advanced Tooling Specialists, Inc.*, 206 Wis. 2d 435, 448, 557 N.W.2d 835 (Ct. App. 1996) (citations omitted).

¶16 Although Wyand-Williams’ complaint alleges that Grzesk, Brown, and Wilson “acted in concert,” it is completely silent regarding the “formation and operation” of the alleged conspiracy. Moreover, aside from conclusory allegations that the coaches pressured, intimidated, and humiliated Wyand-Williams, the

complaint does not specify any wrongful acts the coaches committed in furtherance of the conspiracy. Wyand-Williams merely alleges that the coaches acted unlawfully, without “showing what [they] did[.]” *See id.* Consequently, the allegations in Wyand-Williams’ complaint fail to establish the first and second elements of a civil conspiracy claim.

¶17 Finally, we note that Wyand-Williams amended his complaint almost one and one-half months after the College filed its motion to dismiss. The amended complaint corrected the name of St. Norbert College’s insurer. It did not, however, add any factual allegations or further specify the basis for Wyand-Williams’ claims, even though Wyand-Williams knew the College was arguing that his claims should be dismissed for lack of factual support. If further facts supporting Wyand-Williams’ claims existed, he should have included them in his amended complaint. He chose not to do so, and the circuit court properly dismissed his claims.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

